

Non-Discrimination on the Basis of Disability

A. § 504 Hearing Procedures

1. Issues Giving Rise to a Hearing
A hearing may be requested by any current student or employee over any complaint alleging discrimination based on disability, including complaints concerning the identification, evaluation, and educational placement of students.
2. Requesting a Hearing
Requests for hearing shall be made in writing and directed to the Director of Special Programs who shall act as Coordinator. A hearing must be requested within ninety (90) days of the incident giving rise to the complaint.
3. Appointment of a Hearing Officer
Upon a compliant and request for a hearing being submitted in timely fashion, a hearing officer shall be appointed, on a rotating basis, by the Coordinator from the list of hearing officers maintained by the Supreme Court of Virginia. The hearing officer shall be appointed within one week of receipt of a request for a hearing.

B. Pre-Hearing Procedures:

1. The hearing officer is responsible for the following matters prior to the hearing:
 - (a) Scheduling the time, date, and location of the hearing and providing notification to the parties.
 - (b) Ascertaining whether the parties will be represented at the hearing.
 - (c) Ascertaining whether the hearing will be open to the general public or closed.
 - (d) Ensuring that the hearing is accurately recorded either by recording equipment or by a court reporter.
2. No testimony of witnesses or other evidence shall be introduced into evidence at the hearing unless the party offering the evidence shall have at least seven

Non-Discrimination on the Basis of Disability

calendar days prior to the hearing provided both the opposing party and the hearing officer with authentic and complete copies of the evidence to be offered and a list of all witnesses expected to testify, which list shall include the name, address, telephone number, and occupation of each such witness.

3. Pre-hearing conferences should be held, if appropriate in the judgment of the hearing officer.

C. Hearing Procedures

1. The parties have the following rights at the hearing:

- (a) to be represented by counsel;
- (b) to present evidence and cross-examine witnesses;
- (c) to prohibit the introduction of evidence that has not been disclosed in advance;
- (d) to obtain a copy of the transcript or a tape recording of the hearing (the cost of the transcript to be borne by the requesting party);

2. For hearing requested on behalf of students, the student may attend the hearing.

3. The hearing officer shall ensure in connection with the hearing the following matters:

- (a) An atmosphere conducive to impartiality and fairness.
- (b) An appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the Education of All Handicapped Children Act.
- (c) Maintenance of an accurate record of the proceedings.
- (d) Issuance of a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.
- (e) A decision shall be issued within forty-five (45) calendar days of receipt of the request for a hearing, unless continued for good cause at the request of a party.
- (f) Assignment of the burden of proof to the

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Non-Discrimination on the Basis of Disability

party requesting a change in the status quo.

(g) The hearing officer shall hold all records for thirty (30) days after issuance of the decision. In the event an appeal is noted, the Coordinator will advise the hearing officer of the name and address of the reviewing officer. The hearing officer shall transmit the record to the reviewing officer within three (3) days of the request. In the event no appeal is made, the hearing officer shall return the record to the Coordinator.

D. Review Procedure

1. An appeal may be noted by an aggrieved party by filing a written notice with the Coordinator. An appeal must be filed within thirty (30) days of the date of the decision issued by the hearing officer or the right of the appeal shall be waived.

2. A reviewing officer shall be appointed by the Coordinator within one week from receipt of the request for review from the same list from which the initial hearing officer was appointed.

3. The reviewing officer shall:

- (a) examine the record of the hearing;
- (b) consider additional evidence, if appropriate;
- (c) afford the opportunity to each party for written or oral argument;
- (d) advise the parties of the right to be represented by counsel during the review proceedings; and
- (e) issue a written decision.

4. The reviewing officer shall uphold the initial decision unless it is found to be arbitrary or capricious, contrary to law, or not supported by substantial evidence.

5. The reviewing officer's decision shall be issued within thirty (30) days of receipt of the request for an appeal, unless continued for good cause at the

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Non-Discrimination on the Basis of Disability

request of a party. A copy of the decision shall be sent to all parties.

6. The record of the administrative hearings shall be sent by the reviewing officer to the Coordinator upon the issuance of the decision.

7. The Coordinator is responsible for maintaining all records of hearing and transmittal to court in the event of judicial proceedings.

Approved by the Division Superintendent: February 12, 1991
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